IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 72 OF 2007

Maulana Gulam Yahya Ilahi Bux ..Applicant
V/s
State of Maharashtra ..Respondent.

Mr. R.M. Agarwal, Advocate for Mr. Mobin H. Solkar Advocate for the applicant.

Mr. Raja Thakare, Spl. P.P. with Mrs. M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 23RD FEBRUARY, 2007.

P.C.

. Heard Mr. R.M.Agarwal, learned Counsel for the applicant and Mr. Raja Thakre, learned Special Public Prosecutor for the State. Perused relevant papers.

2. The applicant, seeks to be released on bail in Crime LAC No. 1/2006 registered by Anti Terrorist Squad, Lal chowki for the offences punishable under Sections 4 and 5 of the Indian Explosives Substance Act 1908, and Sections 3 and 25 of the Indian Arms Act and Sections 13,16, 18, 19, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967.

3. On 6/11/2006 police found three persons in possession of electric switches and electronic timers, which can be used for making five bombs, 20 electronic detonators wrapped in a cotton, two electronic timers and 0.32 bore pistol, two more electronic timers, some mobile handsets etc. from three persons, who had come from Kashmir. According to the prosecution, those three person, who are accused Nos. 1 to 3, are the members of Terrorist Organisation Lashkar-e-Toiba. During the investigation it was found that the present applicant, who was in service of Haj Committee at Mumbai as a Peon and who also used to discharge duties of Imam, was closely connected with them. Not only he had secured and reserved rooms with Haj Committee for the accommodation of accused Nos. 1 to 3, but he had also helped them in converting amount of Rs. 37 lacs in small denomination to denomination of Rs. 1000/- through two dealers. According to the prosecution, the present applicant committed offence of raising funds for terrorist activities punishable under Section 17, entering into conspiracy with the terrorist punishable under Section 18, and voluntarily harbouring such terrorist punishable under section 19 of the Unlawful Activities (Prevention) Act, 1967. The offence under

section 17 is punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and also with fine. Similar punishment is provided for section 18. Under Section 19 punishment is imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life with some fine. The offence under the Indian Explosives Act is also punishable with imprisonment which may extend to life imprisonment or shorter terms extending to different terms. According to the prosecution, the country is facing a serious problem of terrorism in different parts of the Country and Mumbai city has been victim of the terrorist activities during last number of years. Such terrorist activities are carried out by different organisations, Lashkar-e-Toiba being one of the leading terrorist organisations doing the anti-national and terrorist activities in the Country. It is contended that the present applicant provided necessary facilities to accused Nos. 1 to 3 and only because by timely action they were arrested and explosive substances were seized one more terrorist act could be prevented. It is contended that such activities cannot be carried out without the help from some local people. The present

applicant, who was working in the Haj Committee, provided such facilities to them and thus abetted the commission of the crimes. It is contended that in such circumstances, it will not be desirable to grant bail to the present applicant.

4. Mr.Agarwal, learned Counsel for the applicant, took me to several statements and other documents from the police record itself to indicate that even though the present applicant had reserved rooms for accused Nos. 1 to 3 with Haj Committee, they had not actually stayed in the said rooms but had stayed some where else in the accommodation provided by the driver of Haj Committee, who also belongs to Kashmir. That driver is no more alive. The learned Counsel also contended that the present applicant had reserved rooms for them with Haj Committee only on the request of the driver because he had told the present applicant that the three persons coming from Kashmir were his relatives. He also contended that he was under the impression that the said three persons were bonafide businessman from Kashmir and had come to Mumbai in connection with their apple business. According to him, due to this understanding only he helped them in converting the amount in smaller

denomination to denomination of Rs. 1000/-, so that they could take back the amount conveniently. He contends that none of those activities may be termed as abetment of any illegal activities nor it amounts to facilitating the criminal activities under the unlawful activities (Prevention) Act. He further contended that the applicant is suffering from serious ailment of Kidney and needs immediate treatment, which is not possible while in jail and therefore, he deserves to be granted bail.

5. After perusal of the record, limited for the purpose for considering of bail application, and the rival submission, I find that prima facie there is material to connect the present applicant with the accused Nos. 1 to 3, who are allegedly members of Lashkar-e-Toiba, a terrorist organisation. At this stage, the defence or exaplanation of the accused cannot be taken into consideration. That may be taken into consideration at the time of the trial. It appears that the applicant was in constant touch with accused Nos 1 to 3 or some of them on mobile. On two occasions he had reserved rooms for them with Haj Committee and had paid amount of Rs. 500/- and Rs. 300/- respectively from

his pocket, though later on they did not come to stay there. It appears that because of presence of police out side Haj Committee building, those persons were afraid to come there. It is material to note that the present applicant had helped them in converting amount of Rs. 12 lacs in smaller denomination into the denomination of Rs. 1000/- through one dealer some time in September - October 2005. During the same period, he had also helped them in converting the amount of Rs.25 lacs into currency note of denomination of Rs.1000/- through a different dealer. It is well known that the terrorist activities in different parts of the country and in the world cannot be carried out without some local help and without sufficient finance. The financing is the back bone of successful operations in such activities. Therefore, the help rendered by the present applicant cannot be prima facie treated as innocent act, particularly, when such help is rendered to the persons who are found in possession of material which could be used for making bombs and for their explosion. Taking into consideration all the circumstances, I am not inclined to grant bail to the present applicant.

6. However, if the applicant is really suffering from some kidney ailment or any other ailment it would be naturally responsibility of jail authority to provide the necessary treatment to him. It will not be desirable to grant bail for treatment for such ailment.

7. For the aforesaid reasons, the application stands rejected. However, the jail authorities are hereby directed to provide all possible treatment to applicant for kidney or other ailments.

(J.H. BHATIA, J.)